REMARKS/ARGUMENTS

The Office Action mailed December 16, 2004 has been carefully reviewed. Reconsideration of this application, as amended and in view of the following remarks, is respectfully requested. The claims presented for examination are: claims 1-17.

35 USC 112, First Paragraph Rejection

In the Office Action mailed December 16, 2004, claim 6 was rejected under 35 U.S.C. §112, first paragraph, as allegedly containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The allegation was made that, "Claim 6 includes many instances of the "interpreting" such as (1) interpreting which files will be affected, (2) interpreting which directories will be affected, (3) interpreting the operating system type, version and architecture, (4) interpreting dependencies on other layered products, and (5) interpreting how much memory and disk space is needed."

Applicants' Response to the 35 USC 112, First Paragraph Rejection

Applicants submit that the specification contains details sufficient for one skilled the art to make and use the invention defined by claim 6. Not everything necessary to practice the invention need be disclosed. In re Buchner, 929 F.2d 660, 661 (Fed. Cir. 1991).

Applicants submit that the specification fully enables the practice of the invention defined by claim 6. First, there was a high level of skill in the art at the time the application was filed. The relative skill of those in the art that is most closely associated with the claimed invention is high, on par with those that hold

a Ph.D. in the related computer technologies. The fact that the skill of those in the art is high, on par with those that hold a Ph.D., shows that here was a high level of skill in the art at the time the application was filed and those in the art would have sufficient background use the specification to fully enable the practice of the invention defined by claim 6.

Second, the methods needed to practice the invention were well known in the art. All of the background needed to practice the invention was well known and publicly available. Computer programs and information publicly available on the internet and in printed publication are consistently used by those skilled in the art.

Third, there was considerable direction and guidance in the specification. Beginning at paragraph [0058] of the specification, guidance and direction is provided. Specific examples were included in the specification.

35 USC 112, Second Paragraph Rejection

In the Office Action mailed December 16, 2004, claim 6 was rejected under 35 U.S.C. §112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The allegations were made,

on page 3, that "Claim 6 includes multiple references to determining software patches ...,"

on page 4, that "Claim 6 includes multiple references to collecting/collection ...,"

on page 4, that "Claim 6 includes multiple references to interpreting ...,"

on page 5, that "Claim 6 includes multiple references to determining dependencies ...,"

on page 5, that "there is insufficient antecedent basis for 'said software patches' which in included in lines 4, 6, 8, 11, 12, and 27 of claim 6,"

on page 5, that "Claim 6 recites determining which of vendor's upgrades and patches have been applied to client's systems,"

on page 5, that "Claim 6 recites determining which of said software upgrades and patches should be or should have been applied to client's systems,"

on page 5, that "Claim 6 recites interpreting how much memory and disk space is need to install software upgrades and installing said software patches,"

on page 6, that "Claim 6 recites determining how dependencies on other patches, or software upgrades affect the installation of a patch,"

on page 6, that "Claim 6 recites determining how dependencies on other software upgrades affect the installation of a patch,"

on page 6, that "Claim 6 recites determining which files will be affected by the installation of a patch,"

on page 6, that "Claim 6 recites determining which directories will be affected by the installation of a patch,"

on page 6, that "Claim 6 recites checking the permissions and ownership of the files referenced in the patch and ensuring that the system software is authentic,"

on page 6, that "Claim 6 recites determining which software patches should be installed by determining the needed software patches and the not needed software patches,"

on page 6, that "Claim 6 recites interpreting which files will be affected by the installation of said software patches" and that "there is insufficient antecedent basis for the installation."

on page 7, that "Claim 6 recites interpreting the operating system type, version and architecture said software patches apply to" and that "there is insufficient antecedent basis for the operating system type," "the version," and "the architecture."

on page 7, that "Claim 6 recites determining which of vendor's upgrades and patches have been applied to client's systems" and that "it is unclear what comprises: (1) vendor's upgrades, (2) vendor's patches, (3) client's systems."

on page 7, that "Claim 6 recites determining which said software upgrades and patches should be or should have been applied to said clients systems," and that "it is unclear what comprises: (1) vendor's upgrades, (2) vendor's patches, (3) client's systems."

on page 7, that "Claim 6 recites collection of said patches and upgrades from said vendor's and downloading said patches and upgrades to client systems," and that it is unclear what comprises "client systems."

on page 7, that Claim 6 recites "determining how dependencies on other layered products affect the installation of said patches and upgrades" and "interpreting dependencies on other layered products" and that it is unclear how determining is different form interpreting.

on page 8, that "Claim 6 recites determining how dependencies on other patches, or software upgrades affect the installation of a patch," and that it is unclear what comprises: "other patches" and "other software upgrades."

Applicants' Response to the 35 USC 112, Second Paragraph Rejection

Applicants submit that:

the alleged multiple references to "determining software patches ..." in claim 6 have been described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected,

to make and/or use the invention and claim 6 is not indefinite within the meaning of 35 USC 112, Second Paragraph;

the alleged multiple references to "collecting/collection ..." in claim 6 are not multiple references at all, but are actually separate claim steps and these separate claim steps have been described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention and claim 6 is not indefinite within the meaning of 35 USC 112, Second Paragraph;

the alleged multiple references to "interpreting ..." in claim 6 not multiple references at all, but are actually separate claim steps and these separate claim steps have been described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention and claim 6 is not indefinite within the meaning of 35 USC 112, Second Paragraph; and

the alleged multiple references to "determining dependencies ..." in claim 6 not multiple references at all, but are actually separate claim steps and these separate claim steps have been described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention and claim 6 is not indefinite within the meaning of 35 USC 112, Second Paragraph.

With regard to the 35 U.S.C. §112, second paragraph, rejection that there is "insufficient antecedent basis for 'said software patches' which is included in lines 4, 6, 8, 11, 12, and 27 of claim 6;" Applicants have amended claim 6 to provide an antecedent basis for the term by including the term "vendor's software patch or vendor's software patches" in the preamble and following the protocol of using the terms "the vendor's software patch" and "the vendor's software patches" in the body of the claim.

With regard to the recitation in claim 6, mentioned on page 5 of the Office Action, "determining which of vendor's upgrades and patches have been applied to client's systems," Applicants have amended claim 6 to make the phrase more definite and submit that the term in amended claim 6 has been described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention and claim 6 is not indefinite within the meaning of 35 USC 112, Second Paragraph.

With regard to the recitation in claim 6, mentioned on page 5 of the Office Action, "determining which of said software upgrades and patches should be or should have been applied to client's systems," Applicants have amended claim 6 to make the phrase more definite and submit that the term in amended claim 6 has been described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention and claim 6 is not indefinite within the meaning of 35 USC 112, Second Paragraph.

With regard to the recitation in claim 6, mentioned on page 5 of the Office Action, "interpreting how much memory and disk space is needed to install software upgrades and installing said software patches," Applicants have amended claim 6 to make the phrase more definite and submit that the term in amended claim 6 has been described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention and claim 6 is not indefinite within the meaning of 35 USC 112, Second Paragraph.

With regard to the recitation in claim 6, mentioned on page 6 of the Office Action, "determining how dependencies on other patches, or software upgrades affect the installation of a patch," Applicants have amended claim 6 to make the phrase more definite and submit that the term in amended claim 6 has been

described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention and claim 6 is not indefinite within the meaning of 35 USC 112, Second Paragraph.

With regard to the recitation in claim 6, mentioned on page 6 of the Office Action, "determining how dependencies on other software upgrades affect the installation of a patch," Applicants have amended claim 6 to make the phrase more definite and submit that the term in amended claim 6 has been described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention and claim 6 is not indefinite within the meaning of 35 USC 112, Second Paragraph.

With regard to the recitation in claim 6, mentioned on page 6 of the Office Action, "determining which files will be affected by the installation of a patch," Applicants have amended claim 6 to make the phrase more definite and submit that the term in amended claim 6 has been described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention and claim 6 is not indefinite within the meaning of 35 USC 112, Second Paragraph.

With regard to the recitation in claim 6, mentioned on page 6 of the Office Action, "determining which directories will be affected by the installation of a patch," Applicants have amended claim 6 to make the phrase more definite and submit that the term in amended claim 6 has been described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention and claim 6 is not indefinite within the meaning of 35 USC 112, Second Paragraph.

With regard to the recitation in claim 6, mentioned on page 6 of the Office Action, "checking the permissions and ownership of the files referenced in the patch and ensuring that the system software is authentic," Applicants submit that the term has been described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention and claim 6 is not indefinite within the meaning of 35 USC 112, Second Paragraph.

With regard to the recitation in claim 6, mentioned on page 6 of the Office Action, "determining the needed software patches and the not needed software patches," Applicants submit that the term has been described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention and claim 6 is not indefinite within the meaning of 35 USC 112, Second Paragraph.

With regard to the recitation in claim 6, mentioned on page 6 of the Office Action, "interpreting which files will be affected by the installation of said software patches," Applicants submit that the term has been described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention and claim 6 is not indefinite within the meaning of 35 USC 112, Second Paragraph.

With regard to the recitation in claim 6, mentioned on page 6 of the Office Action, "interpreting which files will be affected by the installation of said software patches" and that "there is insufficient antecedent basis for the installation," Applicants have amended claim 6 and submit that the term has been described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention and claim 6 is not indefinite within the meaning of 35 USC 112, Second Paragraph.

With regard to the recitation in claim 6, mentioned on page 6 of the Office Action, "interpreting the operating system type, version and architecture said software patches apply to" and that "there is insufficient antecedent basis for the operating system type, the version, and the architecture," Applicants have amended claim 6 and submit that the term has been described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention and claim 6 is not indefinite within the meaning of 35 USC 112, Second Paragraph.

With regard to the recitation in claim 6, mentioned on page 7 of the Office Action, "determining which of vendor's upgrades and patches have been applied to client's system" and that "it is unclear what comprises: (1) vendor's upgrades, (2) vendor's patches, (3) client's systems," Applicants have amended claim 6 and submit that the terms have been described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention and claim 6 is not indefinite within the meaning of 35 USC 112, Second Paragraph.

With regard to the recitation in claim 6, mentioned on page 7 of the Office Action, "determining which said software upgrades and patches should be or should have been applied to said clients systems," and that "it is unclear what comprises: (1) vendor's upgrades, (2) vendor's patches, (3) client's systems," Applicants have amended claim 6 and submit that the terms have been described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention and claim 6 is not indefinite within the meaning of 35 USC 112, Second Paragraph.

With regard to the recitation in claim 6, mentioned on page 7 of the Office Action, "collection of said patches and upgrades from said vendor's and

downloading said patches and upgrades to client systems," and that "what comprises client systems," Applicants have amended claim 6 and submit that the terms have been described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention and claim 6 is not indefinite within the meaning of 35 USC 112, Second Paragraph.

With regard to the recitation in claim 6, mentioned on page 7 of the Office Action, "determining how dependencies on other layered products affect the installation of said patches and upgrades" and "interpreting dependencies on other layered products," Applicants submit that the terms have been described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention and claim 6 is not indefinite within the meaning of 35 USC 112, Second Paragraph.

With regard to the recitation in claim 6, mentioned on page 7 of the Office Action, "determining how dependencies on other patches, or software upgrades affect the installation of a patch," Applicants have amended claim 6 and submit that the terms have been described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention and claim 6 is not indefinite within the meaning of 35 USC 112, Second Paragraph.

35 USC 102(b) Rejection

In the Office Action mailed December 16, 2004, claim 6 was rejected under 35 USC 102(b) as allegedly being anticipated by the Bartoletti et al reference (Conference Publication: Secure Software System by T. Bartoletti et al).

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Applicants' Response to the 35 USC 102(b) Rejection

Applicants point out that many of the elements of amended claim 6 are not found in the Bartoletti et al reference. Applicants will provide illustrations of elements of amended claim 6 that are not found in the Bartoletti et al reference. For example, the following elements of amended claim 6 are not found in the Bartoletti et al reference:

"interpreting which of the files will be affected by installation of the vendor's software patches," or

"interpreting which directories will be affected by the installation of the vendor's software patches," or

"interpreting the operating system type, version and architecture the vendor's software patches apply to," or

"interpreting dependencies on the other layered products," or

"determining how dependencies on the other layered products affect the installation of the vendor's patches and upgrades," or

"determining how dependencies on the other patches, or the other software upgrades affect the installation of a software patch," or

"determining how dependencies on other software upgrades affect the installation of the software patch," or

"determining which of the files will be affected by the installation of the vendor's software patch," or

"determining which of the directories will be affected by the installation of the vendor's software patch," or

"checking the permissions and the ownership of the files referenced in the vendor's software patch and ensuring that the system software is authentic," or

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"determining which of the vendor's software patches should be installed by determining the needed vendor's software patches and the not needed vendor's software patches."

As stated in <u>Verdegaal Bros. v. Union Oil Co. of California</u>, 814 F.2nd 628, 631 USPQ 1051, 1053 (Fed. Cir. 1987), "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference." Many elements of amended claim 6 now presented for examination are not shown by the Bartoletti et al reference. The Bartoletti et al reference is an early paper by the inventors in the subject Application, Marcey L. Kelley, Lauri A. Dobbs, and Tony Bartoletti. The paper is a preliminary report and does not include many of the steps of amended claim 6, in particular the paper does not include the steps of amended claim 6 that are enumerated above. Applicants submit that the Bartoletti et al reference does not support a 35 USC §102 rejection. Applicants submit that the rejection should be withdrawn, amended claim 6 allowed, and the application passed to issue.

SUMMARY

The undersigned respectfully submits that, in view of the foregoing amendments and the foregoing remarks, the rejections of the claims raised in the Office Action dated December 16, 2004 have been fully addressed and overcome, and the present application is believed to be in condition for allowance. It is respectfully requested that this application be reconsidered, that the claims be allowed, and that this case be passed to issue. If it is believed that a telephone conversation would expedite the prosecution of the present application, or clarify matters with regard to its allowance, the Examiner is invited to call the undersigned attorney at (925) 424-6897.

Respectfully submitted,
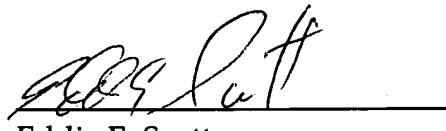
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